

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 570 OF 2007

Anil Shamrao Bawane vs. Sau. Vanita Anil Bawane

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 13, 2007.

Heard Shri Agnihotri, learned counsel for the appellant.

The trial Court granted decree of divorce to present appellant – husband observing that wife has conceived when there was no cohabitation between parties and therefore she had relations with third person. In wife's appeal, the appellate Court found that there were some documents on the record of trial Court which ought to have been looked into to find out whether there was cohabitation between the parties during the relevant period as was sought to be contended in her oral evidence by respondent wife. It also found that the trial Court has gone only by oral evidence of one of the witnesses in this respect.

Shri Agnihotri, learned counsel contends that the documents looked into by the appellate Court were not at all proved before the trial Court and the trial Court was justified in adopting a particular

course. He further contends that the appellate Court in these circumstances could not have, without recording any reason, given an opportunity to the respondent wife to fill in lacuna.

The issue involved is of importance insofar as matrimonial relations between the parties are concerned. The copies of documents looked into by the Appellate Court were already before the trial Court. The appellate Court, therefore, thought it proper to send the matter back to trial Court to enable the parties to lead appropriate evidence in relation to these documents. In view of the finding given by the trial Court and the possible impact of documents on said finding, if these documents are proved in accordance with law, I find that the appellate Court has rightly exercised discretion available to it in the matter.

No substantial question of law, therefore, arises in this Second Appeal. It is, therefore, dismissed. No order as to costs.

JUDGE

*GS.